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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,811	06/24/2003	David V. Boland	2442.001	1082
7590	08/16/2007	B. Craig Killough Barnwell Whaley Patterson & Helms, LLC P.O. Drawer H Charleston, SC 29402	EXAMINER FELTON, MICHAEL J	ART UNIT 1731 PAPER NUMBER PAPER
			MAIL DATE 08/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/602,811	BOLAND, DAVID V.
	Examiner	Art Unit
	Michael J. Felton	1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 November 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4,6,7 and 9-21 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4,6,7, and 9-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1, 4, 6, 7, 9-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 4, 7, 9, 10, 13, 16, 18, 19, 20, and 21, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurlander (US 3,595,507) in view of LaFleur (US 5,794,670) and LeVasseur (US 5,388,717).
3. Regarding claims 1 and 13, 14 Kurlander discloses a refuse bag holder that cinches the refuse bag to prevent the escape of gasses. As shown in figures 1-6, the bag is attached to an upper portion, a center portion reversibly separates the top of the bag from the bottom of the bag, and the bag fills the interior of a lower container.
4. Kurlander does not teach the use of a vacuum system for flattening the bag to the container walls. However LaFleur discloses a vacuum system for making a liner bag conform to its container by evacuating air from between the liner and the container and then sealing the evacuation opening so that air does not enter the container and the liner remains conformed to the container (see abstract).
5. It would have been obvious to one of ordinary skill in the art at the time of invention to use the vacuum system of LaFleur with the refuse system of Kurlander.

Doing so would have increased the filling capacity of Kurlander, and reduced the propensity for tearing as the bag is filled as described by LaFleur. Additional motivation to combine the vacuum system of LaFleur with refuse systems is disclosed by LeVasseur. LeVasseur discloses a refuse can with vents in the lower portion to allow the bag to be placed in the receptacle more easily, and removed more easily. Although this is not an active system, such as LaFleur's, it does manage the air between the container and the bag.

6. Regarding claims 4 and 15, the upper portion of Kurlander's bag holder supports the bag in a funnel shape (figure 1-6).
7. Regarding claims 7 and 18, it would have been obvious to one of ordinary skill in the art at the time of invention to make the upper and lower portions of the refuse system of Kurlander with a vacuum system taught by LaFleur, separable from one another because it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.
8. Regarding claims 9 and 19, LaFleur discloses a pump to take out air (also known as a vacuum pump, col. 1, 35-67).
9. Regarding claims 10 and 20, the two arms disclosed by Kurlander are spring biased normally in the closed position (see figures 1-6, elements 44-46, claim 2, b).
10. Regarding claim 16 Kurlander discloses two arms (figure 1, elements 39 and 30) that separate the top portion of the bag from the bottom portion of the bag.

11. Regarding claim 21, Kurlander does not expressly disclose a deformable conduit, however, the space between the two spring biased arms constitutes an inherent conduit controlling the running of the bag. The insertion of a semi-rigid conduit material would not add a critical difference over what is disclosed by Kurlander.

12. Claims 6 and 17, and 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurlander (US 3,595,507), LaFleur (US 5,794,670), and LeVasseur (US 5,388,717) as applied to rejection of claims 1 and 13 above in further view of Badura (US 5,630,524).

13. Regarding claims 6 and 17, Kurlaner, LaFleur, and LeVasseur do not disclose all the types of bag materials useful in their inventions. Badura discloses a bag made of flame retardant material for containing smoking an chewing gum waste (abstract). It would have been obvious to one of ordinary skill in the art at the time of invention that the bag material of Badura, or any other known bag material, could have been used with the inventions of Lurlander, LaFleur and LeVasseur. Using a bag of fire resistant material would allow smoking materials, as well as oil rags, and other flammable materials to be disposed of safely.

14. Regarding claims 11 and 12, it would have been obvious to one of ordinary skill in the art at the time of invention that the invention of Kurlaner, LaFleur, and LeVasseur, with the bag of Badura, would have been used in the manner claimed (bag added to can, vacuum applied to remove air and suction bag to container, biased closure opened, object disposed of, closure closed, bag is removed from can). It is notoriously

well known how items are disposed of in refuse containers, including those with closure mechanisms. The additional step of applying a vacuum is disclosed by LaFleur. A burning item would inherently extinguish in the invention of Kurlaner if a fire resistant bag is used as disclosed by Badura.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Felton whose telephone number is 571-272-4805. The examiner can normally be reached on Monday to Friday, 7:30 AM to 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJF



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